

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JUDY KROSHUS, et al.,

3:09-cv-0713-LDG-RAM

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

On August 9, 2011, defendants TRC Engineers, Inc., fka VPOINT, Martin Ugalde, Robert Bidart, and Michael Bidart filed a motion to dismiss for abstention and to stay proceedings (#275, opposition #277, reply #278). Defendants pointed out that plaintiffs have filed a similar action in state court and argued that plaintiffs were seeking a double recovery, and the court should abstain under the Colorado River doctrine. Subsequently, on October 21, 2011, defendants filed their supplement to motion to dismiss and motion to strike plaintiffs' complaint (#287). The supplement raised completely new arguments dealing with the requirement under NRS 11.258 and NRS 40.6884 for filing an affidavit of merit concurrently with service. The record, however, does not indicate that plaintiffs have filed a response to the affidavit-of-merit arguments raised by defendants. Under the rules, plaintiffs are not required to respond to a supplemental filing, and the motion to strike was not filed or docketed separately. In any event, the court deems it important in this instance that plaintiffs be allowed to address the affidavit-of-merit arguments before the court rules on the motions. Accordingly,

1 THE COURT HEREBY ORDERS that defendants TRC Engineers, Inc., fka VPOINT, Martin
2 Ugalde, Robert Bidart, and Michael Bidart's motion to dismiss for absention and to stay proceedings
3 (#275) and supplement to motion to dismiss and motion to strike plaintiffs' complaint (#287) are
4 DENIED without prejudice to their reinstatement by defendants after plaintiffs have had the
5 opportunity to address the affidavit-of-merit argument raised by defendants in their supplement to the
6 motion to dismiss and motion to strike plaintiffs' complaint.

7 THE COURT FURTHER ORDERS that plaintiffs shall have 60 days from the date of this
8 order in which to file their response to the affidavit of merit argument raised by defendants, and
9 defendants shall have 30 days from the date of plaintiffs' response in which to file a reply.

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11 DATED this 30 day of March, 2012.

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14 Lloyd D. George
15 United States District Judge
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